

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LYNETTE BRADFIELD,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

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UNPUBLISHED

March 21, 2006

No. 258458

Saginaw Circuit Court

LC No. 03-048486-NO

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff entered defendant's store to shop. As she walked toward the checkout lanes she carried a shopping basket in one hand and a twelve-pack of bathroom tissue in the other hand. As plaintiff passed a display, she tripped on a metal strip at the bottom of the display and fell to the floor, sustaining injuries.

Plaintiff filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to plaintiff because the condition was open and obvious, and that no special aspects rendered the condition unreasonably dangerous in spite of its open and obvious nature. Plaintiff argued that the display created an unreasonable risk for customers, especially in light of the fact that defendant could expect that customers would be distracted by merchandise offered for sale. *Jaworski v Great Scott Supermarkets, Inc.*, 403 Mich 689, 699-700; 272 NW2d 518 (1978). The trial court granted the motion, finding that the condition was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be

anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id.* at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

A storekeeper must provide reasonably safe aisles for customers. In a premises liability action, a plaintiff must show either that the defendant caused the unsafe condition, or that the defendant knew or should have known of the unsafe condition. Such knowledge may be inferred from evidence that the condition existed for a sufficient length of time for the storekeeper to have discovered it. *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

We affirm. The fact that plaintiff claims that she did not see the metal strip until after she fell is irrelevant. *Novotney, supra* at 477. Public policy dictates that persons take reasonable care for their own safety. *Bertrand, supra* at 616-617. Absent circumstances that did not allow for caution, such as an inability to see an obstruction until it was too late to avoid it, a reasonably prudent person would refrain from walking past a display in such a manner that would cause her to trip. *Id.* It is reasonable to conclude that plaintiff would have avoided tripping on the metal strip had she been paying attention to the area in which she was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not produce sufficient evidence to create an issue of fact as to whether an average person with ordinary intelligence would have discovered the condition upon casual inspection.

Plaintiff's reliance on the "distraction" theory announced in *Jaworski, supra*, a contributory negligence case, is misplaced. The *Jaworski, supra*, reasoning applied where a duty had been found to exist. Here, because the condition was open and obvious, no duty existed. *Bertrand, supra* at 609; *Novotney, supra*.

Plaintiff's act of carrying items in her hands in a manner that obstructed her vision was not a special aspect of the condition itself. Had she simply watched the area in which she was walking, any risk of harm would have been obviated. *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Plaintiff failed to demonstrate the existence of any special aspect that made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo, supra* at 519-520.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra